

1 The Law Offices of Leon Ozeran
2 Leon Ozeran, Esq., CA Bar No.: 296071
3 8200 Wilshire Blvd., Suite 400
4 Beverly Hills, CA 90211
5 Tel: (310) 461-3730
6 EFax: 424-302-0490
7 Attorney for Plaintiff
8 ALEXANDER RUSSELL

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ALEXANDER RUSSELL
Plaintiff,

vs.

BMW of NORTH AMERICA,
LLC; and
DOES 1-20
inclusive;

Defendants.

Case Action No.:

CLASS ACTION

JURY DEMAND

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF BASED ON:**

1. CONVERSION;
2. MISREPRESENTATION &
DECEIT;
3. UNFAIR BUSINESS PRACTICES
IN VIOLATION OF BUSINESS &
PROFESSIONAL CODE §172000;
4. UNJUST ENRICHMENT
5. INTERFERENCE WITH
POTENTIAL ECONOMIC
ADVANTAGE;
6. BREACH OF IMPLIED
COVENANT OF GOOD FAITH &
FAIR DEALING

INTRODUCTION

1
2 1. Plaintiff Alexander Russell (“Plaintiff”) individually and on behalf of
3 all others similarly situated, by and through his attorney, hereby brings this
4 Collective and Class Action Complaint against BMW of NORTH AMERICA, LLC
5 (“BMW NA” or “BMW”) and DOES 1-20 to seek redress for BMW’s deceptive and
6 unfair practices as it relates to their car lease terms.

7 2. BMW NA entered into the agreement and implemented a policy of
8 denying motorists insured under a Safeco policy the benefits of the policy (proceeds)
9 paid out by Safeco in cases of a total loss of the vehicle. Plaintiff’s vehicle, a 2019
10 BMW M45 was totaled as a result of the traffic accident. Safeco agreed to pay out
11 the market value of the car established to be \$106,178.97. After BMW was notified
12 of the total loss, BMW NA demanded that Safeco pay the entire amount to the
13 BMW, even though at that point, the total outstanding amount of the unpaid lease
14 according to the BMW’s Lease Agreement with the Plaintiff was confirmed by
15 BMWFS to be \$81,589.57, leaving Plaintiff’s equity in the vehicle of \$24, 589.40.
16 It is believed and therefore alleged that BMW NA enacted such a practice to
17 drastically increase its profitability by diverting what rightfully shall be the
18 Plaintiff’s equity (funds) for its own use. Thus, it is also alleged that BMW engaged
19 in the deceptive and fraudulent practice of misrepresenting the meaning of the
20 Agreement and providing false and deceptive interpretations and statements.

PARTIES

21
22 3. At all relevant times, Plaintiff ALEXANDER RUSSELL is a resident
23 of the State of California. He leased a 2019 BMW X5 (“Plaintiff’s vehicle”) from
24 STERLING BMW (“Dealer”) on 10/19/2019.

25 4. BMW North America, LLC (“BMW NA” or “BMW”) is a Delaware
26 Limited Liability Company with its principal place of business located in Woodcliff
27 Lake, New Jersey.
28

1 5. BMW FINANCIAL SERVICES NA, LLC (“BMWFS”) is a financial
2 arm of the BMW NA and is a servicer of Lease Agreements for BMW NA. All
3 financial operations in connection with the Lease Agreements are handled by
4 BMWFS and in this case, the final pay-off amount for the total loss of the Plaintiff’s
5 vehicle was also requested and then forwarded by Safeco to BMWFS.

6 6. In this case, BMWFS provided all instructions to Safeco related to the
7 payoff instructions, and the funds for the final pay-off amount from Safeco were sent
8 to BMWFS.

9 7. All acts and omissions of BMW NA and BMWFS and their
10 employees, agents, associates, partners, parents, or subsidiaries as alleged herein
11 occurred while they were acting within the course and scope of their duties, and
12 therefore BMW is responsible for Plaintiff under the doctrine of Respondeat
13 Superior and/or other doctrines.

14 8. Defendant BMW NA operates through numerous entities performing
15 different tasks. These entities are not independent but fully owned and controlled by
16 the BMW NA. BMWFS is just one such entity. All such entities, including the
17 BMWFS, were agents or employees of the BMW NA and were acting within the
18 scope and course of their agency and employment, and with the direction,
19 permission, and consent of the BMW NA, thus each of them is responsible in some
20 manner for the events and happenings herein referred to or otherwise proximately
21 caused the acts, omissions or events hereinafter alleged.

22 9. Plaintiff does not know the true names and capacities of all above-
23 mentioned entities, whether corporate, partnership, associate, individual or otherwise
24 of BMW issued herein as Does 1 through 20. Plaintiff will seek leave to amend this
25 Complaint to set forth the true names and capacities of the fictitiously named BMW
26 together with appropriate charging allegations when ascertained.

1 10. All acts of corporate employees as alleged were authorized or ratified
2 by an officer, director, or managing agent of the corporate employer.

3 11. Each Defendant, whether actually or fictitiously named herein was the
4 principal, agent (actual or ostensible), or employee of BMW NA and in acting as
5 such principal or within the course and scope of such employment or agency, took
6 some part in the acts and omissions hereinafter set forth because of which each
7 Defendant is liable to Plaintiff for the relief prayed for herein.

8 **JURISDICTION AND VENUE**

9 12. BMW is one of the largest car manufacturers in the world. It has
10 thousands of dealerships throughout the world including multiple dealerships
11 in California. Thus, BMW has purposefully availed themselves of the privilege of
12 conducting activities in the state of California and has established minimum contacts
13 sufficient to confer jurisdiction over them; and the assumption of jurisdiction over
14 BMW will not offend traditional notions of fair play and substantial justice and is
15 consistent with the Constitutional requirements of due process.

16 13. This Court has jurisdiction over the subject matter of this action under
17 28 U.S.C. §1332(a).

18 14. The matter in controversy exceeds \$75,000.00, exclusive of interest
19 and costs; and Plaintiff and Defendant are citizens of different states.

20 15. The claims asserted by the putative class, when aggregated according
21 to 28 U.S.C. § 1332(d)(6), exceed the amount of \$5,000.000 as required by 28
22 U.S.C. § 1332(d)(2).

23 16. At least one member of the California Class is a citizen of a State
24 different from at least one BMW within the meaning of 28 U.S.C. § 1332(d)(2)(A).

25 17. The number of members of all putative classes alleged exceeds 100 as
26 required by 28 U.S.C. §1332(d)(5)(B).

1 18. The primary Defendants are not States, State officials, or other
2 governmental entities under the definition of 28 U.S.C. § 1332(d)(5)(A).

3 19. Venue is proper in this District pursuant to 28 U.S.C. §1391(a)
4 because a substantial part of the events or omissions giving rise to the claims
5 occurred in the Central District of California.

6 20. This Court has supplemental jurisdiction over state claims pursuant to
7 28 U.S.C. §1367 because the claims arise from a common nucleus of operative facts
8 and thus adjudication of both state and federal claims furthers the interests of the
9 judicial economy.

10 21. Accordingly, this Court has jurisdiction over the parties and the
11 subject matter of this action, and the venue is proper.

12 **GENERAL ALLEGATIONS**

13 22. It is well-known fact that for the last few years, due to inflation and
14 difficulties with manufacturing and delivery of new cars, the demand for pre-owned
15 (used) cars has risen dramatically. As a result of rising demand, the value of used
16 cars has gone up. Leased vehicles' values have begun to exceed the residual values
17 specified in the original car lease agreements. Such an increase in residual value has
18 created a situation where lessees have found themselves in possession of vehicles
19 whose market value is significantly more than the amounts owed on their respective
20 leases, as calculated by Civil Code Section 2987. As a result of this increased equity,
21 in case of a total loss of the vehicle, often the insurance companies appraise the
22 replacement market value of the car as higher than the remaining loan amount as
23 specified in the lessees' agreements with BMW. Thus, lessees are recognizing that
24 they have equity exceeding the outstanding balance and shall be entitled to receive
25 the difference from the insurance companies. Lessees were the ones who purchased
26 the policies and made payments to their policies required as a condition of the Lease.

PLAINTIFF'S EXPERIENCE

23. Plaintiff's case is one such case. On 10/19/2019 Plaintiff entered an Agreement to lease a BMW X5 from STERLING BMW ("Dealer") for 36 months with the scheduled maturity date of 10/09/2022.

24. On 02/14/2022, Plaintiff was involved in a traffic accident that resulted in the total loss of the vehicle. His insurance company, Safeco, according to his Safeco policy agreed to pay the replacement value of the BMW X5.

25. Due to the above-mentioned factors of used car market appreciation, at the time of the accident, the market value of the BMW X5 was determined by Safeco to be \$106,178.97; at the same time, the residual balance on Plaintiff's Loan according to BMWFS was \$81,589.57, thus leading to the Plaintiff having \$24,589.40 in equity.

26. However, despite numerous attempts by Plaintiff's attorneys to persuade Safeco to pay out the equity portion to Plaintiff, Safeco complied with BMW's demands to forward the entire amount to BMWFS.

27. In a letter to Plaintiff's attorneys dated March 31, 2022, BMWFS made misleading statements stating that because the car was a total loss, Plaintiff immediately lost his right to purchase the vehicle and BMW has the right to terminate the Agreement. BMWFS provided what looks like a legal conclusion that because BMW elected to terminate the Agreement, it automatically "repossesses" the Plaintiff's right of ownership and his rights to deal with Safeco.

28. BMWFS further stated that based on the fact that BMW Trust was listed as the owner on the title of the car (which is usual practice in the case of leased vehicles) it is the rightful owner of the vehicle and can collect the entire proceed well exceeding the amount of the loan.

29. In Lease Agreements, the leasing company (BMW) cannot transfer the title to the Lessee (Plaintiff) until the total amount of the loan is paid off and

1 thus, holds the title in its own name (BMW Trust) during the lease payment period
2 to assure performance under the Agreement. Then, when the final payment is made
3 and the loan is paid off, the Agreement is terminated as completed and the Lessor
4 forwards the title to the Lessee for DMV transfer. That is a routine practice.

5 30. If that case would not have involved the “total loss” argument, under
6 the “normal” payoff procedure, as soon as the final payment was received, the
7 titleholder, BMW Trust would have forwarded the title (i.e. Pink Slip) to the Lessee.

8 31. In a closed-end consumer vehicle lease, the consumer is always
9 entitled to purchase the vehicle during the term of the lease, or at the end of the
10 lease. That right is clearly stated in the Lease Agreement Section 27: the Lessee has
11 a “right to purchase a vehicle ASIS, WHERE-IS.” Also, Section 30 of the Lease
12 provides that Lessee may terminate this Lease at ANY TIME.

13 32. In a above-mentioned letter dated March 21, 2022, BMW made
14 several false and misleading representations related to the issue as to why under the
15 Lease Agreement BMWFS is entitled to the entire payout and why lessees’ could
16 not purchase their vehicles in case of a total loss. In fact, those representations were
17 false and BMW knew the statements were false when they made the representations.
18 There is no provision in the Lease Agreement listing BMWFS as a solo Loss Payee
19 under Section 20. Contrary to BMWFS’s position, BMWFS is listed only as an
20 additional payee secondary to the Lessee. Even more misleading is the statement in
21 the letter that: “*BMWFS is entitled to the insurance proceeds in the event of a total*
22 *loss.*” BMW implies in its interpretation is that it is entitled to the **entire payment**
23 **regardless of whether it exceeds the payoff amount or not.**

24 33. BMW’s actions of twisting the essence of the Lease Agreement,
25 misquoting the Sections of the Agreement, and then providing opinions interpreting
26 the Agreement to represent an outright lie perpetrated by BMW to deny Lessees
27 rightful equity and fraudulently appropriate their money, thus committing
28

1 conversion. Under no circumstances does this Agreement provide for a windfall to
 2 BMW – that was not a part of intentions of the parties at the time of signing the
 3 Agreement. In reality, any funds in excess of the outstanding balance do not belong
 4 to BMW regardless whether they were sent to BMW by mistake or deceit. Thus an
 5 acceptance by BMW of any amount exceeding the loan balance and then refusal to
 6 refund it upon demand represents fraud and theft, and possibly a criminal offense.

7 34. As stated above, BMW should have known that its intentional actions
 8 were false, fraudulent, and deceptive. Cal. Civil Code § 2987 discusses a
 9 “...lessee’s right to early termination of lease contract; conditions; notice.” Under
 10 Cal. Civil Code § 2987, consumers have the right to terminate their lease early at
 11 any time and for any reason as long as the money owed to the lessor is sufficient to
 12 cover the payoff amount of the lease.

13 35. BMW has colluded and intimidated other entities to engage in the
 14 wrongful conduct alleged herein. BMW has done this for its benefits which
 15 included that BMW receives a windfall from converting the lessees’ equity into its
 16 own profit.

17 36. BMW adopted such a deceptive scheme to advance deceptive
 18 statements, non-existing provisions, and fraudulent conclusions to intimidate lessees
 19 into giving up their equities and to strong-arm Safeco and other insurance companies
 20 into compliance with BMW’s demands.

21 **TOLLING**

22 **A. Discovery Rule Tolling**

23 37. Class Members had no way of knowing about BMW’s deceptive
 24 practices concerning the truthfulness of BMW’s statements of state and contractual
 25 prohibitions of the third-party dealers.

26 38. Within the period of any applicable statutes of limitation, Plaintiff and
 27 the other Class Members could not have discovered through the exercise of
 28

1 reasonable diligence that BMW was hiding its true practices. All applicable statutes
2 of limitation have been tolled by the operation of the discovery rule.

3 **B. Fraudulent Concealment Tolling**

4 39. All applicable statutes of limitation have also been tolled by BMW's
5 knowing and active fraudulent concealment and denial of the facts alleged herein
6 throughout the period relevant to this action.

7 **C. Estoppel**

8 40. BMW was under a continuous duty to disclose to Plaintiff and other
9 Class Members the true character, quality, and nature of their Lease Agreements and
10 pay-off policies, including BMW's claim that in case of a total loss, the lessees lose
11 their right to purchase their vehicles.

12 41. BMW knowingly, affirmatively, and actively concealed true facts
13 from consumers.

14 42. Based on the foregoing, BMW is estopped from relying on any
15 statutes of limitations in defense of this action.

16 **EQUITABLE RELIEF**

17 43. Absent an equitable injunction enjoining BMW's conduct alleged
18 herein, Plaintiff, the Class, and the public will be irreparably harmed and denied an
19 effective and complete remedy because they face the real and tangible threat of
20 future harm emanating from BMW's ongoing conduct, which cannot be remedied
21 with monetary damages.

22 44. Plaintiff does not know at this juncture whether the Court will accept
23 a model for legal damages that Plaintiff will proffer in the future at the appropriate
24 time, or whether the Court will find that any such model adequately compensates
25 Plaintiff's and the Class's losses. Accordingly, Plaintiff sets forth alternate claims
26 for legal damages and equitable restitution.

45. Similarly, as set forth herein, BMW's material deceit and misrepresentations made in regards to the ability of the Lessee (Plaintiff) to purchase the vehicle in case of the total loss are ongoing and, accordingly, represent an ongoing threat to Plaintiff, the Class, and members of the general public who have not yet (but who are likely to) come into contact with BMW's misrepresentations, and who risk becoming injured thereby. Plaintiff seeks, on behalf of himself, the Class, and the general public, an injunction prohibiting BMW from refusing to allow lessees to buy out their vehicles after total loss; and also prohibiting BMW to accept funds from insurance companies in excess of an amount of remaining loan on the Agreement. Specifically, Plaintiff seeks the Court's determination that insurance companies shall pay out the loan amount to the BMW and excess funds to the insured lessees as their equity.

CLASS ACTION ALLEGATIONS

Class actions:

46. Plaintiff brings this action as a class action on his behalf and behalf of all others similarly situated under Federal Rule of Civil Procedure 23, for declaratory judgment, restitution, injunctive relief, damages, costs, and attorneys' fees.

47. Plaintiff brings this class action lawsuit on behalf of himself and the proposed class of similarly situated persons, pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure. Plaintiff seeks to represent the following group of similarly situated persons (the "Class"), defined as follows:

All persons who leased BMW vehicles and then suffered a total loss of their leased vehicles and were precluded from receiving a payout equal to their equity in their vehicles.

48. The members of the Class are so numerous that the joinder of all members is impracticable. On information and belief, there are in excess of a

1 thousand members of the Class. Discovery will reveal, through BMW's records, the
2 approximate number of Class members. However, the class is estimated to be
3 greater than 100 individuals and the identity of such membership is readily
4 ascertainable and the total damages will exceed \$5,000.000.

5 49. Common questions of law and fact exist to all members of the Class,
6 which predominate over any questions that may affect individual Class members.
7 Among the questions of law and fact common to the Class are the following:

- 8 i. Whether BMW's policy of prohibiting lessees from buy-outs of their
9 vehicles after accidents that resulted in total loss caused Plaintiff and the
10 Class to suffer economic harm;
- 11 ii. Whether BMW violated California Business and Professions Code §§
12 17200, *et seq.*;
- 13 iii. Whether BMW's misrepresentations and deceit are material to
14 reasonable consumers;
- 15 iv. Whether Plaintiffs and the Class are entitled to restitution or damages
16 and if so, the court may establish that the appropriate measure of
17 damages is the difference between the Pay-Off amount and the Fair
18 Market Value of the Vehicle as determined by insurance
19 companies/authorized appraisals;
- 20 v. Whether BMW's actions violate federal and California laws invoked
21 herein;
- 22 vi. Whether BMW engaged in the behavior knowingly, fraudulently,
23 recklessly, or negligently; and,
- 24 vii. Whether Class and Subclass members are entitled to payment of actual,
25 incidental, consequential, exemplary, and/or statutory damages plus
26 interest thereon, and if so, what is the nature of such relief?
- 27
- 28

1 50. Plaintiff knows of no difficulty that will be encountered in the
2 management of this litigation that would preclude its maintenance as a class action.

3 51. The prosecution of separate actions by individual members of the
4 Class would run the risk of inconsistent or varying adjudications, which might
5 establish incompatible standards of conduct for the BMW. Prosecution as a class
6 action will eliminate the possibility of repetitious litigation.

7 52. The questions of law and fact common to the members of the Class
8 predominate over any questions that may affect only individual members.

9 53. Plaintiff will fairly and adequately represent and protect the interests
10 of the members of the Class. Plaintiff is a member of the Class described herein and
11 does not have interests antagonistic to, or in conflict with, the other members of the
12 Class.

13 54. The Class is readily definable and prosecution as a class action will
14 eliminate the possibility of duplicative litigation, while also providing redress for
15 claims that would otherwise be too small to support the expense of individual
16 complex litigation.

17 55. A class action is superior to other available methods for the fair and
18 efficient adjudication of this controversy. Because the monetary damages suffered
19 by individual Class members are relatively small, the expense and burden of
20 individual litigation make it impossible for individual Class members to seek redress
21 for the wrongful conduct asserted herein. If Class treatment of these claims is not
22 available, BMW would likely continue their wrongful conduct, will unjustly retain
23 improperly obtained revenues, and/or otherwise escape liability for their
24 wrongdoing.

25 56. BMW was unjustly enriched to the detriment of the Class, entitling
26 the Class to disgorgement of all monies resulting therefrom;
27
28

57. The Class is entitled to restitution and/or disgorgement, in addition to, or as a substitute for, damages under California law.

58. Plaintiff's claims are typical of the Class because all members of the Class were injured, and may continue to be injured, in the same manner by BMW's unlawful, anticompetitive and inequitable methods, acts, and practices.

59. Unless addressed, BMW's practices will continue and the Class will further be harmed in the future.

60. The class damages are similar and ubiquitous.

FIRST CAUSE OF ACTION

CONVERSION

61. Plaintiff hereby refers to and incorporates all above paragraphs of this Complaint by reference, as though fully set forth herein.

62.

"Conversion is generally described as the wrongful exercise of dominion over the personal property of another. . . . The basic elements of the tort are (1) the plaintiff's ownership or right to possession of the personal property; (2) the BMW's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages." CACI Sec. 2100

63. In this case, Plaintiff entered into a valid contractual agreement with STERLING BMW ("Dealer") to lease a 2019 BMW X5 for 36 months with the scheduled maturity date of 10/09/2022.

64. On 02/14/2022, Plaintiff was involved in a traffic accident that resulted in a total loss of the vehicle. Safeco agreed to pay the replacement value of the BMW X5.

65. The market value of BMW X5 was determined by Safeco at this time to be \$106,178.97; at the same time, the residual balance on Plaintiff's Loan

1 according to BMWFS was confirmed to be \$81,589.57, thus leading to Plaintiff
2 having \$24,589.40 in equity.

3 66. Despite attempts by Plaintiff to persuade BMW to refund the equity
4 portion in the amount of \$24,589.40 to Plaintiff, BMW refuses to do so. The entire
5 amount is still in possession of BMW.

6 67. BMW's interpretation of the Lease Agreement and the "legal"
7 conclusion made by BMWFS was specifically designed to intimidate insurance
8 companies and force them to forward the entire payouts to BMW, thus denying
9 Lessees rightful equity.

10 68. In this case, due to such policy, Safeco refused to pay Plaintiff the
11 difference i.e. the equity, and forwarded the entire amount to BMWFS.

12 69. Because the payment of equity was never refunded, Plaintiff suffered
13 economic harm.

14 70. BMW acted tortuously, intentionally, and improperly, using deceit
15 and coercion.

16 71. It was reasonably foreseeable to BMW that acting in such a manner
17 would expose people, such as the Plaintiff and Class to harm. And in fact, Plaintiff
18 and others similarly situated suffered harm.

19 **SECOND CAUSE OF ACTION**

20 **Misrepresentation, Deceit**

21 72. Plaintiff hereby refers to and incorporates all above paragraphs of this
22 Complaint by reference, as though fully set forth herein.

23 73. In a letter dated March 21, 2022, BMW made several false and
24 misleading representations related to the issue as to why under the Lease Agreement
25 BMWFS is entitled to the entire payout and why lessees' could not purchase their
26 vehicles in case of a total loss. BMW Financial made representations that:
27
28

“As servicer for the owner of the leased vehicle, and pursuant to the terms outlined in Section 20 of the Motor Vehicle Lease Agreement (Lease Agreement), BMW FS is listed as loss payee on the vehicle's insurance policy. Under Section 25, the insurance company is required to settle with BMW FS for the actual cash value of the vehicle at the time of loss. The lessee's obligations under Section 25 are limited to any past due payments, property taxes, any deductible, or other items deducted from the actual cash value of the vehicle by the insurance company”.

“...BMW FS is entitled to the insurance proceeds in the event of a total loss.”

Letter March 31, 2022

74. In fact, those representations were false and BMW knew the statements were false when they made the representations. There is no provision in the Lease Agreement **listing BMWFS as a solo Loss Payee under Section 20**. The correct wording is as follows:

“The coverage will name you as an additional insured and loss payee. I will provide you with at least 30 days' advance notice of cancellation. You have the right to endorse my name on any insurance check or settlement you receive. You also have the right to speak to my insurance company about my insurance coverage.”

Lease Sec. 20

75. Contrary to BMWFS's position in Sec. 20 (above), BMWFS is listed only as an additional payee secondary to the Lessee. The correct interpretation of Sec. 20 is that both, (Lessee and BMW) are payees under insurance payouts. Clearly, there is no provision that BMW **is the solo payee** and moreover, is **entitled to more** than the remainder of the loan.

76. Additionally, under Section 25 (above), **there is no provision** that the insurance company is required to settle **unilaterally and without the Lessee...**

1 77. Even more misleading is the statement by the BMWFS in the March
2 21, 2022 letter that: “*BMW FS is entitled to the insurance proceeds in the event of a*
3 *total loss.*” BMW implies in such statement that it is for a fact entitled to the **entire**
4 **payment regardless of whether it exceeds the payoff amount or not.** The correct
5 wording of the Lease Agreement is as follows:

6 “The Lease Agreement provides for a gap waivers” if the actual cash
7 price were less than the Adjusted Lease Balance however, as the
8 owner of the leased vehicle, BMW FS is entitled to the insurance
9 proceeds in the event of a total loss.

10 78. **B**BMW’s statement that “is entitled to the insurance proceeds” is a half-
11 truth, thus misleading. Nowhere in the Agreement is it stated that BMW is entitled to
12 more payout than the outstanding loan. What this Section means is that if the amount
13 paid by the insurance company is less than the Adjusted Lease Balance, BMWFS is
14 entitled to that insufficient amount and in addition to a “gap” insurance amount all to
15 collect the outstanding loan to be whole. In case these two amounts are not enough,
16 the Lessee shall be responsible for a shortfall and is obligated under the Agreement
17 to add to the full amount of the loan from his/her own funds.

18 79. To understand the meaning of this provision, we have to remember
19 that the Lease Agreement was enacted in 2019 when, “normally”, the value of the
20 used vehicle was less than an expected residual value. Otherwise, the car companies
21 would adjust prices on leased vehicles to prevent such a situation. At that time, it
22 was expected that if the car is a total loss, the remaining loan would not be satisfied
23 and thus, BMW would not whole. Therefore, as a condition of the Lease, BMW
24 required a “gap” insurance to be included in the policy to cover the difference in
25 insurance payout (value at the time of total loss) and the remainder of the loan. In
26 2019, BMW did not foresee that value of the used cars would rise. Thus, the
27 Agreement should have merely provided an ability for BMW to collect as much of
28 the remaining loan as possible, i.e. getting insurance payouts, gap insurance, and

1 other lessee's obligations (as listed in Section 25) to collect as close to the remaining
2 balance as possible. The agreed purpose of the Agreement by the signing parties
3 was to assure that the loan gets paid. Under no circumstances does this Agreement
4 provide for a windfall to BMW – that was not a part of the “meeting of the minds” at
5 the time of signing the Agreement. Thus, an acceptance by BMW of any amount
6 exceeding the loan balance and then refusal to refund it upon demand represents
7 pocketing the Lessees' money a.k.a. theft.

8 80. The above-stated “interpretations and opinions” of the relevant
9 provisions of the Agreement by BMW were presented to Safeco to deceive it and
10 force it to forward the entire payment to BMW instead of splitting the payout and
11 paying Plaintiff his equity. BMW's actions of twisting the essence of the Lease
12 Agreement, misquoting the Sections of the Agreement, and then providing opinions
13 interpreting the Agreement to represent an outright lie perpetrated by BMW to deny
14 Lessees rightful equity and fraudulently appropriate their money, thus committing
15 conversion.

16 81. BMW intended that Plaintiff and the Class rely on BMW's
17 representations that only BMW is entitled to the equity in Lessees' cars, thus
18 forfeiting their equity.

19 82. Plaintiff and the Class detrimentally relied on BMW's deceit and were
20 harmed by that.

21 83. BMW's actions were a substantial factor in causing such harm.

22 **THIRD CAUSE OF ACTION**

23 **Unfair Business Practices in Violation of Business & Professional Code** 24 **§17200 (UCL).**

25 84. Plaintiff hereby refers to and incorporates all above paragraphs of this
26 Complaint by reference, as though fully set forth herein.
27
28

1 85. Plaintiff and the class suffered an economic injury due to BMW
2 policy.

3 86. Under UCL, a plaintiff has standing by establishing he or she
4 surrendered in a transaction more or acquired in a transaction less than he or she
5 otherwise would have. Cal. Bus. & Prof. Code § 17204. Here, Plaintiff and the
6 Class were in a position to receive the benefit of the appreciation of their leased
7 vehicle but were wrongly deprived of such benefit by BMW.

8 87. BMW committed acts of unfair business practice, as defined by
9 sections 17200, *et seq.* of the California Business and Professions Code.

10 88. The Unfair prong of the UCL creates a cause of action for business
11 practice that is unfair even if not proscribed by some other law. Here, the BMW's
12 practice was unfair to Plaintiff and the Class in denying them their right to enjoy the
13 benefit of the appreciation of their leased vehicles.

14 89. BMW's aforementioned practices, which BMW continues to use, to
15 receive significant financial gain, also constitute unlawful competition.

16 90. The Fraudulent prong: BMW engaged in the deceptive practice of
17 misleading consumers to forfeit their equity.

18 91. The Unlawful prong: In its acts of misleading consumers regarding
19 their rights to receive equity in vehicles, BMW violated other state and federal laws
20 related to misrepresentation. It is unlawful for BMW to be engaged in the deceptive
21 practice of misleading consumers to obtain more profit.

22 92. Furthermore, in the letter dated March 31, 2022, describing the
23 insurance payoff procedure, BMW made misleading and deceitful statements related
24 to the alleged Lease Agreement's provisions requiring Plaintiff and Class Members
25 to surrender and forfeited their rights so only BMW would be entitled to the profit.
26
27
28

1 93. Those statements were false and misleading. Such statements caused
2 Plaintiff and the Class to be deprived of money and/or property to which they had a
3 cognizable claim.

4 94. Plaintiff and the Class detrimentally relied on statements made by
5 BMW thus, suffering an injury in fact and economic losses.

6 95. Business & Professions Code §17200 provides that: “....unfair
7 competition shall mean and include any unlawful or fraudulent business act or
8 practice.” The acts of omissions, and misrepresentations, together with practices of
9 deceit by the BMW, as alleged herein, constitute a continuous and continuing course
10 of conduct of unfair competition by means of unfair; unlawful, and/or fraudulent
11 business acts or practices within the meaning of California Business and Professions
12 Code, section 17200, *et seq.*”

13 96. There were reasonably available alternatives to further BMW’s
14 legitimate business interests, other than the conduct described above.

15 97. Plaintiff and members of the Class were misled and coerced into
16 surrendering their rights to the BMW as alleged above.

17 98. Plaintiff and members of the Class were misled and, because the
18 misrepresentations Lease Agreement provisions were material, presumably believed
19 that their only option for lack of their rights was to surrender their equity to the
20 BMW, thus suffering economic damages by losing their profits.

21 99. BMW violated the UCL by knowingly and intentionally refusing to
22 allow lessees to buy out their vehicles contrary to the provision in an Agreement
23 Sec. 27 allowing to do that ASIS, WHERE-IS to receive rightful equity.

24 100. An unfair business practice occurs when it offends an established
25 public policy or when the practice is immoral, unethical, oppressive, unscrupulous,
26 or substantially injurious to consumers. Here, BMW's actions fit under such a
27 definition. BMW coerced the Class to surrender their rights to the BMW thus
28

1 depriving the Class of receiving profit. Simply put, BMW grabbed Lessees' money
2 by misleading Safeco into sending the entire amount to BMW.

3 101. As a direct and proximate result of such actions, Plaintiffs and the
4 other Class members have suffered, and continue to suffer, injury in fact and have
5 lost money and/or property as a result of such false, deceptive, and misleading
6 practices in an amount that will be proven at trial.

7 102. BMW has been and continues to be unjustly enriched as a result of
8 their wrongful conduct.

9 103. The Class is accordingly entitled to equitable relief including
10 restitution and/or disgorgement of all revenues, earnings, profits, compensation, and
11 benefits that may have been obtained by BMW as a result of such business practices.

12 **FOURTH CAUSE OF ACTION**

13 **For Unjust Enrichment**

14 104. Plaintiff hereby refers to and incorporates all above paragraphs of this
15 Complaint by reference, as though fully set forth herein.

16 105. Plaintiff and the Class conferred upon BMW an economic benefit,
17 like windfall profits resulting from unlawful misrepresentation and coercion of the
18 customers surrendering their equity to BMW.

19 106. BMW benefits resulting from their unlawful and inequitable conduct
20 are economically traceable to denying Class rights to buy out their vehicles.

21 107. The economic benefit of windfall consists of receiving more than
22 BMW was entitled otherwise under the Agreement through depriving lessees of their
23 right to purchase their vehicles and realize their profit. Plaintiff's and the Class'
24 losses were a direct and proximate result of BMW's unlawful practices.

25 108. It would be inequitable and unjust for BMW to be permitted to retain
26 any of the unlawful windfalls resulting from their fraudulent, illegal, and inequitable
27 conduct.
28

109. As alleged in this Complaint, BMW has been unjustly enriched as a result of their wrongful conduct and by BMW's unfair coercion tactics. Plaintiff and the Class are, accordingly, entitled to equitable relief including restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by BMW as a result of such business practices.

FIFTH CAUSE OF ACTION

Interference with Potential Economic Advantage and Contractual Relations

110. Plaintiff hereby refers to and incorporates all above paragraphs of this Complaint by reference, as though fully set forth herein.

111. Intentional interference with contractual relations occurs when a party intentionally and by improper means damages the Plaintiff's contractual or other business relationships.

112. In this case, Plaintiff entered into a valid contractual agreement with Safeco Insurance for the policy of his vehicle and fully paid the premium.

113. On or about February 14, 2022, Plaintiff's BMW X5 was totaled due to an auto accident; Plaintiff then requested \$24,589.40 as the payoff from Safeco in the amount of his equity, equal to the difference between the market value of his car and his loan. However, BMWFS interfered and instructed Safeco to forward the entire payment to the BMWFS, including Plaintiff's equity portion. Safeco did as requested and then, BMWFS refused to refund the equity to Plaintiff.

114. Improper means are actions that are independently actionable such as violations of federal or state law or unethical business practices including misrepresentation (among others).

115. Plaintiff individually purchased an insurance policy with Safeco. He alone dutifully paid the entire premium, thus he had an economic relationship with Safeco to receive his equity in case of the accident (in this case \$24,589.40.)

116. BMW enacted a deceptive policy of dealing with insurance companies that were specifically designed to disrupt such business relationships and deny Plaintiff and Class their rightful profit.

117. Due solely to such policy, the existing business relationship/contract between Plaintiff and Safeco was violated and the funds went to the BMW.

118. Because Plaintiff was denied his equity, he suffered economic harm.

119. BMW acted tortuously, intentionally, and improperly, using deceit and coercion.

120. It was reasonably foreseeable by BMW that acting in such a manner would expose people, such as the Plaintiff and Class to harm. And in fact, Plaintiff and others similarly situated did suffer harm.

SIXTH CAUSE OF ACTION

Breach of Implied Covenant of Good Faith & Fair Dealing in Contract

121. Plaintiff hereby refers to and incorporates all above paragraphs of this Complaint by reference, as though fully set forth herein.

122. In every contract or agreement, there is an implied promise of good faith and fair dealing. This means that each party will not do anything to unfairly interfere with the right of any other party to receive the benefits of the contract; however, the implied promise of good faith and fair dealing cannot create obligations that are inconsistent with the terms of the contract.

123. BMW breached the contract by violating the duty to act fairly and in good faith.

124. BMW is in the business of providing leasing, and/or sale of vehicles.

125. Plaintiff, and members of the Class, entered into contracts with BMW to lease vehicles. As stated in the standard Lease Agreement **Section 27**, the Lessee has a right to buy out (purchase) a vehicle ASIS, WHERE-IS. **Section 30** provides that Lessee may terminate this Lease at ANY TIME. If the Lessee wants to buy out

1 the car, the Lease Agreement provides the absolute right of ownership associated
2 with the unimpeded and absolute right to buy the vehicle in any condition and deal
3 with an insurance company on his own.

4 126. Nonetheless, BMW denied Plaintiff the right to purchase his car after
5 the accident and stripped him of ownership rights solely for the purpose of
6 appropriating his right to the insurance payout and thus, his portion of equity.

7 127. All conditions required for BMW's performance had occurred, i.e.
8 BMW should have refunded the Lessee's equity to Plaintiff and the Class.

9 128. BMW unfairly interfered with Plaintiff's and the Class' right to obtain
10 equity in their vehicles. BMW thus breached the implied covenant of good faith
11 owed to Plaintiff and the Class.

12 129. Plaintiff and the Class were harmed by BMW's conduct.

13 **DAMAGES**

14 130. As the direct and proximate results of the wrongful acts of BMW,
15 Plaintiff and the Class have suffered general, special, incidental, and consequential
16 damages as would be anticipated to arise under the circumstances. In addition,
17 because of the alleged intentional fraud, concealment, misrepresentation, and deceit,
18 Plaintiff and the Class are entitled to punitive damages, which shall be fully proven
19 at the time of trial.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff, on behalf of himself and those similarly situated,
22 respectfully request that the Court enter judgment against BMW as follows:

23 1. Certification of the Proposed Class, including the appointment of
24 Plaintiff's counsel as class counsel;

25 2. An order temporarily and permanently enjoining BMW from
26 continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged
27 in this Complaint; BMW's acts of unfair and unlawful practices as set forth above
28

1 present a continuing threat and will persist and continue to do so unless and until this
2 Court issues appropriate injunctive relief.

3 3. That judgment may be entered in favor of Plaintiff and against BMW;

4 4. That the Court adjudge and decree that BMW's conduct, deceit, or
5 combination violates the Unfair Competition Law, section 17200, et seq. of the
6 Business & Professions Code;

7 5. An award of damages, trebled, in an amount according to proof;

8 6. An award of compensatory and punitive damages in an amount to be
9 determined at trial;

10 7. An award of restitution, including disgorgement of profits obtained by
11 BMW as a result of their acts of unjust enrichment, or any acts in violation of state
12 antitrust or consumer protection statutes and laws, including section 17000 of the
13 Business & Professions Code;

14 8. An award of pre-and post-judgment interest, and that the interest is
15 awarded at the highest legal rate from and after the date of service of the initial
16 Complaint in this action;

17 9. For the costs of suit incurred and reasonable attorney's fees; and,

18 10. That the Court grants other legal and equitable relief as it may deem
19 just and proper under the circumstances, including such other relief as the Court may
20 deem just and proper.

21 JURY TRIAL DEMAND

22 Plaintiff hereby demands trial by jury for all causes of action, claims, or issues
23 in this action that are triable as a matter of right to a jury.

24 Dated: May 13, 2022

THE LAW OFFICES OF LEON OZERAN

25
26 /s/ Leon Ozeran

Leon Ozeran, Esq.,

27 Attorney for Plaintiff
28